

IC 4-22-2

Chapter 2. Adoption of Administrative Rules

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-2**Repealed**

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-3**Definitions**

Sec. 3. (a) "Agency" means any officer, board, commission, department, division, bureau, committee, or other governmental entity exercising any of the executive (including the administrative) powers of state government. The term does not include the judicial or legislative departments of state government or a political subdivision as defined in IC 36-1-2-13.

(b) "Rule" means the whole or any part of an agency statement of general applicability that:

(1) has or is designed to have the effect of law; and

(2) implements, interprets, or prescribes:

(A) law or policy; or

(B) the organization, procedure, or practice requirements of an agency.

(c) "Rulemaking action" means the process of formulating or adopting a rule. The term does not include an agency action.

(d) "Agency action" has the meaning set forth in IC 4-21.5-1-4.

(e) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.

(f) "Publisher" refers to the publisher of the Indiana Register and Indiana Administrative Code, which is the legislative council, or the legislative services agency operating under the direction of the council.

(g) The definitions in this section apply throughout this article.

(Formerly: Acts 1945, c.120, s.3; Acts 1967, c.183, s.1.) As amended by Acts 1977, P.L.38, SEC.2; Acts 1978, P.L.17, SEC.1; Acts 1979, P.L.25, SEC.1; Acts 1980, P.L.74, SEC.6; Acts 1982, P.L.27, SEC.1; P.L.31-1985, SEC.1; P.L.7-1987, SEC.5; P.L.8-1993, SEC.28.

IC 4-22-2-4**Repealed**

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-4.5**Repealed**

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-5**Repealed**

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-5.3

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-5.5

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-6

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-7

Repealed

(Repealed by Acts 1977, P.L.38, SEC.8.)

IC 4-22-2-7.1

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-8

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-9

Repealed

(Repealed by Acts 1977, P.L.38, SEC.8.)

IC 4-22-2-10

Repealed

(Repealed by Acts 1977, P.L.38, SEC.8.)

IC 4-22-2-11

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-12

Repealed

(Repealed by P.L.31-1985, SEC.50.)

IC 4-22-2-13

Application of chapter

Sec. 13. (a) Subject to subsections (b), (c), and (d), this chapter applies to the addition, amendment, or repeal of a rule in every rulemaking action.

(b) This chapter does not apply to the following agencies:

(1) Any military officer or board.

(2) Any state educational institution (as defined in IC 20-12-0.5-1).

(c) This chapter does not apply to a rulemaking action that results in any of the following rules:

(1) A resolution or directive of any agency that relates solely to internal policy, internal agency organization, or internal procedure and does not have the effect of law.

(2) A restriction or traffic control determination of a purely local nature that:

(A) is ordered by the commissioner of the Indiana department of transportation;

(B) is adopted under IC 9-20-1-3(d), IC 9-21-4-7, or IC 9-20-7; and

(C) applies only to one (1) or more particularly described intersections, highway portions, bridge causeways, or viaduct areas.

(3) A rule adopted by the secretary of state under IC 26-1-9.1-526.

(4) An executive order or proclamation issued by the governor.

(d) Except as specifically set forth in IC 13-14-9, sections 24, 26, 27, and 29 of this chapter do not apply to rulemaking actions under IC 13-14-9.

As added by P.L.31-1985, SEC.2. Amended by P.L.18-1990, SEC.8; P.L.2-1991, SEC.21; P.L.34-1993, SEC.1; P.L.44-1995, SEC.1; P.L.1-1996, SEC.28; P.L.57-2000, SEC.1.

IC 4-22-2-14

Procedural rights and duties

Sec. 14. This chapter creates only procedural rights and imposes only procedural duties. These procedural rights and duties are in addition to those created and imposed by other law.

As added by P.L.31-1985, SEC.3.

IC 4-22-2-15

Delegation of rulemaking actions

Sec. 15. Any rulemaking action that this chapter allows or requires an agency to perform, other than final adoption of a rule under section 29 or 37.1 of this chapter, may be performed by the individual or group of individuals with the statutory authority to adopt rules for the agency, a member of the agency's staff, or another agent of the agency. Final adoption of a rule under section 29 or 37.1 of this chapter, including readoption of a rule that is subject to sections 24 through 36 or to section 37.1 of this chapter and recalled for further consideration under section 40 of this chapter, may be performed only by the individual or group of individuals with the statutory authority to adopt rules for the agency.

As added by P.L.31-1985, SEC.4. Amended by P.L.1-1991, SEC.15.

IC 4-22-2-16

"Governing body", "public agency", and "official action" defined

Sec. 16. For the purposes of this section, "governing body", "public agency", and "official action" have the meanings set forth in IC 5-14-1.5. When a governing body of a public agency performs an official action under this chapter, the agency shall comply with IC 5-14-1.5 (the Open Door Law).

As added by P.L.31-1985, SEC.5.

IC 4-22-2-17

Public access to rules and proposed rules

Sec. 17. (a) IC 5-14-3 applies to the text of a rule that an agency intends to adopt from the earlier of the date that the agency takes any action under section 24 of this chapter, otherwise notifies the public of its intent to adopt a rule under any statute, or adopts the rule.

(b) IC 5-14-3 applies both to a rule and to the full text of a matter directly or indirectly incorporated by reference into the rule.

As added by P.L.31-1985, SEC.6.

IC 4-22-2-18

Joint rules

Sec. 18. (a) If more than one (1) agency is required by statute to adopt the same rule, the agencies may publish a joint notice of a public hearing and conduct a joint public hearing. However, each agency shall separately draft and adopt a rule that covers the same subject matter.

(b) If an agency is authorized to adopt a rule and one (1) or more agencies are required to approve the rule, only the agency that is authorized to adopt the rule is required to comply with this chapter.

As added by P.L.31-1985, SEC.7.

IC 4-22-2-19

Action preceding effectiveness of authorizing statute

Sec. 19. (a) Except as provided in section 23.1 of this chapter, this section does not apply to the adoption of rules:

- (1) required by statute if initiation of the rules is contingent upon the receipt of a waiver under federal law;
- (2) that amend an existing rule;
- (3) required by statutes enacted before June 30, 1995; or
- (4) required by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

(c) However, an agency shall:

- (1) begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule; or
- (2) if an agency cannot comply with subdivision (1), immediately provide written notification to the administrative

rules oversight committee stating the reasons for the agency's noncompliance.

If an agency notifies the administrative rules oversight committee concerning a rule in compliance with subdivision (2), failure to adopt the rule within the time specified in subdivision (1) does not invalidate the rule.

As added by P.L.31-1985, SEC.8. Amended by P.L.44-1995, SEC.2.

IC 4-22-2-19.1

Retroactive changes affecting taxpayer liability

Sec. 19.1. A state agency may not retroactively apply a change in the agency's interpretation of a statute, regulation, or one of the agency's information bulletins, if that change increases a taxpayer's liability for a state tax or a property tax.

As added by P.L.17-1996, SEC.1.

IC 4-22-2-19.5

Standards for rules

Sec. 19.5. (a) To the extent possible, a rule adopted under this article or under IC 13-14-9.5 shall comply with the following:

(1) Minimize the expenses to:

(A) regulated entities that are required to comply with the rule;

(B) persons who pay taxes or pay fees for government services affected by the rule; and

(C) consumers of products and services of regulated entities affected by the rule.

(2) Achieve the regulatory goal in the least restrictive manner.

(3) Avoid duplicating standards found in state or federal laws.

(4) Be written for ease of comprehension.

(5) Have practicable enforcement.

(b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

As added by P.L.17-1996, SEC.2.

IC 4-22-2-20

Submission of rules; form

Sec. 20. Whenever an agency submits a rule to the publisher, the attorney general, the governor, or the secretary of state under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

As added by P.L.31-1985, SEC.9.

IC 4-22-2-21

Incorporation by reference

Sec. 21. (a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may

incorporate by reference into a rule part or all of any of the following matters:

- (1) A federal or state statute, rule, or regulation.
 - (2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.
 - (3) A manual of the department of local government finance adopted in a rule described in IC 6-1.1-31-9.
- (b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.
- (c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the primary matter.

(d) Whenever an agency submits a rule to the attorney general, the governor, or the secretary of state under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

- (1) An Indiana statute or rule.
- (2) A form or instructions for a form numbered by the commission on public records under IC 5-15-5.1-6.
- (3) The source of a statement that is quoted or paraphrased in full in the rule.
- (4) Any matter that has been filed with the secretary of state before the date that the rule containing the incorporation is filed.
- (5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

(e) An agency may comply with subsection (d) by submitting a paper or an electronic copy of the full text of the matter incorporated by reference.

As added by P.L.31-1985, SEC.10. Amended by P.L.34-1993, SEC.2; P.L.6-1997, SEC.4; P.L.90-2002, SEC.9; P.L.28-2004, SEC.43.

IC 4-22-2-22

Attorney general as legal advisor

Sec. 22. The attorney general is the legal advisor to all agencies in the drafting and preparation of rules.

As added by P.L.31-1985, SEC.11.

IC 4-22-2-23

Notice of intent to adopt rule; solicitation of comments; response

Sec. 23. (a) This section does not apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency shall notify the public of its intention to adopt a rule by publishing a notice of intent to adopt a rule in the Indiana Register at least thirty (30) days before the preliminary adoption of the rule. The publication notice must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule. The requirement to

publish a notice of intent to adopt a rule does not apply to rulemaking under IC 13-14-9. The agency shall solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. The agency shall prepare a written response that contains a summary of the comments received during any part of the rulemaking process. The written response is a public document. The agency shall make the written response available to interested parties upon request.

As added by P.L.31-1985, SEC.12. Amended by P.L.44-1995, SEC.3; P.L.1-1996, SEC.29.

IC 4-22-2-23.1

Solicitation of comments

Sec. 23.1. (a) This section and section 19(b) of this chapter apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency may solicit comments from all or any segment of the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

As added by P.L.44-1995, SEC.4.

IC 4-22-2-24

Notice of hearings on adoption of proposed rules

Sec. 24. (a) An agency shall notify the public of its intention to adopt a rule by complying with the publication requirements in subsections (b) and (c).

(b) The agency shall cause a notice of a public hearing to be published once in one (1) newspaper of general circulation in Marion County, Indiana. To publish the newspaper notice, the agency shall directly contract with the newspaper.

(c) The agency shall cause a notice of public hearing and the full text of the agency's proposed rule (excluding the full text of a matter incorporated by reference under section 21 of this chapter) to be published once in the Indiana Register. To publish the notice and proposed rule in the Indiana Register, the agency shall submit the text to the publisher. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) The agency shall include in the notice required by subsections (b) and (c):

(1) a statement of the date, time, and place at which the public

- hearing required by section 26 of this chapter will be convened;
- (2) a general description of the subject matter of the proposed rule; and
- (3) an explanation that the proposed rule may be inspected and copied at the office of the agency.

However, inadequacy or insufficiency of the subject matter description in a notice does not invalidate a rulemaking action.

(e) Although the agency may comply with the publication requirements in this section on different days, the agency must comply with all of the publication requirements in this section at least twenty-one (21) days before the public hearing required by section 26 of this chapter is convened.

(f) This section does not apply to the solicitation of comments under section 23 of this chapter.

As added by P.L.31-1985, SEC.13.

IC 4-22-2-25

Limitations

Sec. 25. (a) An agency has one (1) year from the date that it publishes a notice of intent to adopt a rule in the Indiana Register under section 23 of this chapter to comply with sections 26 through 33 of this chapter and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of intent to adopt a rule under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of the notice of intent to adopt a rule under section 23 of this chapter, notify the chairperson of the administrative oversight committee in writing of the:

- (1) reasons why the rule was not adopted and the expected date the rule will be completed; and
 - (2) expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter.
- (b) If a rule is not approved before the later of:
- (1) one (1) year after the agency publishes notice of intent to adopt the rule under section 23 of this chapter; or
 - (2) the expected date contained in a notice concerning the rule that is provided to the administrative rules oversight committee under subsection (a)(2);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

As added by P.L.31-1985, SEC.14. Amended by P.L.44-1995, SEC.5.

IC 4-22-2-26

Public hearings

Sec. 26. (a) After the notices and the text of an agency's proposed rule are published under section 24 of this chapter, the agency shall conduct a public hearing on the proposed rule.

- (b) The agency shall convene the public hearing on the date and

at the time and place stated in its notices.

(c) The agency may conduct the public hearing in any informal manner that allows for an orderly presentation of comments and avoids undue repetition. However, the agency shall afford any person attending the public hearing an adequate opportunity to comment on the agency's proposed rule through the presentation of oral and written facts or argument.

(d) The agency may recess the public hearing and reconvene it on a different date or at a different time or place by:

(1) announcing the date, time, and place of the reconvened public hearing in the original public hearing before its recess; and

(2) recording the announcement in the agency's record of the public hearing.

(e) An agency that complies with subsection (d) is not required to give any further notice of a public hearing that is to be reconvened.
As added by P.L.31-1985, SEC.15.

IC 4-22-2-27

Consideration of comments received at public hearings

Sec. 27. The individual or group of individuals who will finally adopt the rule under section 29 of this chapter shall fully consider comments received at the public hearing required by section 26 of this chapter and may consider any other information before adopting the rule. Attendance at the public hearing or review of a written record or summary of the public hearing is sufficient to constitute full consideration.

As added by P.L.31-1985, SEC.16.

IC 4-22-2-28

Review by economic development council; suggested alternatives; fiscal analysis by legislative services agency

Sec. 28. (a) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(b) The agency shall also submit a proposed rule with an estimated economic impact greater than five hundred thousand dollars (\$500,000) on the regulated entities to the legislative services agency after the preliminary adoption of the rule. Except as provided in subsection (c), before the adoption of the rule, the legislative services agency shall prepare, not more than forty-five (45) days after receiving a proposed rule, a fiscal analysis concerning the effect that compliance with the proposed rule will have on the:

(1) state; and

(2) entities regulated by the proposed rule.

The fiscal analysis must contain an estimate of the economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal analysis is a public document. The legislative services agency shall make the fiscal analysis available to interested parties upon request. The agency proposing the rule shall consider the fiscal analysis as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal analysis. The legislative services agency may also receive and consider applicable information from the regulated entities affected by the rule in preparation of the fiscal analysis.

(c) With respect to a proposed rule subject to IC 13-14-9:

- (1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and
- (2) the legislative services agency shall prepare the fiscal analysis referred to in subsection (b) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

As added by P.L.31-1985, SEC.17. Amended by P.L.44-1995, SEC.6; P.L.17-1996, SEC.3; P.L.240-2003, SEC.2.

IC 4-22-2-29

Adoption of rules; adoption of revised version of proposed rule

Sec. 29. (a) After an agency has complied with sections 26, 27, and 28 of this chapter, the agency may:

- (1) adopt a rule that is identical to a proposed rule published in the Indiana Register under section 24 of this chapter;
- (2) subject to subsection (b), adopt a rule that consolidates part or all of two (2) or more proposed rules published in the Indiana Register under section 24 of this chapter and considered under section 27 of this chapter;
- (3) subject to subsection (b), adopt part of one (1) or more proposed rules described in subsection (a)(2) in two (2) or more separate adoption actions; or
- (4) subject to subsection (b), adopt a revised version of a proposed rule published under section 24 of this chapter and include provisions that did not appear in the published version.

(b) An agency may not adopt a rule that substantially differs from the version or versions of the proposed rule or rules published in the Indiana Register under section 24 of this chapter, unless it is a logical outgrowth of any proposed rule as supported by any written comments submitted during the public comment period.

As added by P.L.31-1985, SEC.18. Amended by P.L.12-1993, SEC.2.

IC 4-22-2-30

Repealed

(Repealed by P.L.44-1995, SEC.8.)

IC 4-22-2-31

Submission of rules to attorney general for approval

Sec. 31. (a) After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The attorney general shall determine the number of copies of the rule and other documents to be submitted under this section.

As added by P.L.31-1985, SEC.20. Amended by P.L.34-1993, SEC.3; P.L.1-1996, SEC.30.

IC 4-22-2-32

Review of rule by attorney general; approval or disapproval

Sec. 32. (a) The attorney general shall review each rule submitted under section 31 of this chapter for legality.

(b) In the review, the attorney general shall determine whether the rule adopted by the agency complies with the requirements under section 29 of this chapter. The attorney general shall consider the following:

(1) The extent to which all persons affected by the adopted rule should have understood from the published rule or rules that their interests would be affected.

(2) The extent to which the subject matter of the adopted rule or the issues determined in the adopted rule are different from the subject matter or issues that were involved in the published rule or rules.

(3) The extent to which the effects of the adopted rule differ from the effects that would have occurred if the published rule or rules had been adopted instead.

In the review, the attorney general shall consider whether the adopted rule may constitute the taking of property without just compensation to an owner.

(c) Except as provided in subsections (d) and (h), the attorney general shall disapprove a rule under this section only if it:

(1) has been adopted without statutory authority;

(2) has been adopted without complying with this chapter;

(3) does not comply with requirements under section 29 of this chapter; or

(4) violates another law.

Otherwise, the attorney general shall approve the rule without making a specific finding of fact concerning the subjects.

(d) If an agency submits a rule to the attorney general without complying with section 20(2) of this chapter, the attorney general may:

(1) disapprove the rule; or

(2) return the rule to the agency without disapproving the rule.

(e) If the attorney general returns a rule under subsection (d)(2), the agency may bring the rule into compliance with section 20(2) of

this chapter and resubmit the rule to the attorney general without readopting the rule.

(f) If the attorney general determines in the course of the review conducted under subsection (b) that a rule may constitute a taking of property, the attorney general shall advise the following:

- (1) The governor.
- (2) The agency head.

Advice given under this subsection shall be regarded as confidential attorney-client communication.

(g) The attorney general has forty-five (45) days from the date that an agency:

- (1) submits a rule under section 31 of this chapter; or
- (2) resubmits a rule under subsection (e);

to approve or disapprove the rule. If the attorney general neither approves nor disapproves the rule, the rule is deemed approved, and the agency may submit it to the governor for approval under section 33 of this chapter without the approval of the attorney general.

(h) For rules adopted under IC 13-14-9, the attorney general:

- (1) shall determine whether the rule adopted by the agency under IC 13-14-9-9(2) is a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of testimony presented at the board meeting held under IC 13-14-9-5(a)(3); and
- (2) may disapprove a rule under this section only if the rule:
 - (A) has been adopted without statutory authority;
 - (B) has been adopted without complying with this chapter or IC 13-14-9;
 - (C) is not a logical outgrowth of the proposed rule as published under IC 13-14-9-5(a)(2) and of the testimony presented at the board meeting held under IC 13-14-9-5(a)(3); or
 - (D) violates another law.

As added by P.L.31-1985, SEC.21. Amended by P.L.36-1989, SEC.1; P.L.34-1993, SEC.4; P.L.12-1993, SEC.3; P.L.1-1996, SEC.31.

IC 4-22-2-33

Submission of rules to governor for approval

Sec. 33. (a) After a rule has been approved or deemed approved under section 32 of this chapter, the agency shall submit the rule to the governor for approval. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The governor shall determine the number of copies of the rule and other documents to be submitted under this section.

As added by P.L.31-1985, SEC.22.

IC 4-22-2-34

Approval or disapproval of rule by governor

Sec. 34. (a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the secretary of state within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disapprove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the secretary of state without the approval of the governor.

As added by P.L.31-1985, SEC.23.

IC 4-22-2-35

Submission of rule to secretary of state for filing

Sec. 35. (a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this section.

(c) Subject to section 39 of this chapter, the secretary of state shall:

- (1) accept the rule for filing; and
- (2) file stamp and indicate the date and time the rule is accepted on every duplicate original copy submitted.

As added by P.L.31-1985, SEC.24.

IC 4-22-2-36

Effective date of rules

Sec. 36. A rule that has been accepted for filing under section 35 of this chapter takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date that is thirty (30) days from the date and time that the rule was accepted for filing under section 35 of this chapter.
- (3) The effective date stated by the agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

As added by P.L.31-1985, SEC.25.

IC 4-22-2-37

Repealed

(Repealed by P.L.1-1990, SEC.35.)

IC 4-22-2-37.1 Version a

Emergency rules; submission to publisher; assignment of

**document control number; submission to secretary of state;
effective date; expiration; extension**

Note: This version of section amended by P.L.1-2004, SEC.1. See also following version of this section amended by P.L.23-2004, SEC.1.

Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

- (1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.
- (2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- (3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.
- (4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.
- (5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.
- (6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.
- (7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.
- (8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.
- (9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.
- (10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.
- (11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.
- (12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.
- (13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.
- (14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:
 - (A) the variance procedures are included in the rules; and
 - (B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.
- (15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.
- (16) An emergency rule adopted by the department of natural

resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(23) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(24) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(25) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34.

(26) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33.

(27) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(28) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is

accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

As added by P.L.1-1990, SEC.36. Amended by P.L.24-1990, SEC.1; P.L.27-1991, SEC.1; P.L.2-1991, SEC.22; P.L.28-1991, SEC.1; P.L.29-1991, SEC.1; P.L.26-1991, SEC.1; P.L.2-1992, SEC.38; P.L.24-1992, SEC.1; P.L.2-1993, SEC.36; P.L.3-1993, SEC.239; P.L.34-1993, SEC.5; P.L.35-1993, SEC.1; P.L.277-1993(ss), SEC.125; P.L.1-1994, SEC.10; P.L.16-1994, SEC.1; P.L.15-1994, SEC.1; P.L.2-1995, SEC.5; P.L.1-1995, SEC.37; P.L.45-1995, SEC.1; P.L.47-1995, SEC.1; P.L.46-1995, SEC.1; P.L.2-1996, SEC.212; P.L.1-1996, SEC.32; P.L.17-1996, SEC.4; P.L.2-1997, SEC.12; P.L.27-1997, SEC.1; P.L.79-1998, SEC.4; P.L.273-1999, SEC.160; P.L.204-2001, SEC.6; P.L.287-2001, SEC.1; P.L.283-2001, SEC.1; P.L.1-2002, SEC.10; P.L.120-2002, SEC.1; P.L.1-2003, SEC.9; P.L.235-2003, SEC.1; P.L.255-2003, SEC.1; P.L.141-2003, SEC.1; P.L.1-2004, SEC.1.

IC 4-22-2-37.1 Version b

Emergency rules; submission to publisher; assignment of

**document control number; submission to secretary of state;
effective date; expiration; extension**

*Note: This version of section amended by P.L.23-2004, SEC.1.
See also preceding version of this section amended by P.L.1-2004,
SEC.1.*

Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

- (1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.
- (2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- (3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.
- (4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.
- (5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.
- (6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.
- (7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.
- (8) An emergency rule jointly adopted by the water pollution control board and the budget agency under IC 13-18-13-18.
- (9) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.
- (10) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.
- (11) An emergency rule adopted by the Indiana transportation finance authority under IC 8-21-12.
- (12) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.
- (13) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.
- (14) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:
 - (A) the variance procedures are included in the rules; and
 - (B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.
- (15) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.
- (16) An emergency rule adopted by the department of natural

resources under IC 14-10-2-5.

(17) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(18) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(19) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(20) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(21) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(22) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(23) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(24) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(25) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34.

(26) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33.

(27) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(28) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that the rule is

accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsection (j), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(14), (a)(25), (a)(26), or (a)(28), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. A rule adopted under subsection (a)(14) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(25), (a)(26), or (a)(28) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(14), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(9), or (a)(13) expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(25) or (a)(26) expires not later than January 1, 2006.

As added by P.L.1-1990, SEC.36. Amended by P.L.24-1990, SEC.1; P.L.27-1991, SEC.1; P.L.2-1991, SEC.22; P.L.28-1991, SEC.1; P.L.29-1991, SEC.1; P.L.26-1991, SEC.1; P.L.2-1992, SEC.38; P.L.24-1992, SEC.1; P.L.2-1993, SEC.36; P.L.3-1993, SEC.239; P.L.34-1993, SEC.5; P.L.35-1993, SEC.1; P.L.277-1993(ss), SEC.125; P.L.1-1994, SEC.10; P.L.16-1994, SEC.1; P.L.15-1994, SEC.1; P.L.2-1995, SEC.5; P.L.1-1995, SEC.37; P.L.45-1995, SEC.1; P.L.47-1995, SEC.1; P.L.46-1995, SEC.1; P.L.2-1996, SEC.212; P.L.1-1996, SEC.32; P.L.17-1996, SEC.4; P.L.2-1997, SEC.12; P.L.27-1997, SEC.1; P.L.79-1998, SEC.4; P.L.273-1999, SEC.160; P.L.204-2001, SEC.6; P.L.287-2001, SEC.1;

P.L.283-2001, SEC.1; P.L.1-2002, SEC.10; P.L.120-2002, SEC.1; P.L.1-2003, SEC.9; P.L.235-2003, SEC.1; P.L.255-2003, SEC.1; P.L.141-2003, SEC.1; P.L.23-2004, SEC.1.

IC 4-22-2-38

Certain nonsubstantive rules; adoption; submission to publisher; document control number; submission to secretary of state; effective date; objections

Sec. 38. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20 of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 24 through 37.1 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the secretary of state for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the secretary of state shall:

(1) accept the rule for filing; and

(2) file stamp and indicate the date and time that it is accepted on every duplicate original copy that is submitted.

(g) Subject to subsection (h), a rule described in subsection (a)

takes effect on the latest of the following dates:

- (1) The date that the rule being corrected by a rule adopted under this section becomes effective.
- (2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).

(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the secretary of state, the objection has the effect of invalidating the rule.

As added by P.L. 31-1985, SEC.27. Amended by P.L. 1-1991, SEC.16.

IC 4-22-2-39

Acceptance of rule for filing by secretary of state

Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, or 38 of this chapter, the secretary of state may accept the rule for filing only if the following conditions are met:

- (1) A sufficient number of duplicate original copies of the rule are submitted to allow the secretary of state to comply with IC 4-22-7-5.
- (2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.
- (3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule, the secretary of state shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

(b) If a rule includes a statement that the rule is not effective until:

- (1) an agency has complied with requirements established by the federal or state government;
- (2) a specific period of time has elapsed; or
- (3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the secretary of state reviews the rule under this section.

(c) The secretary of state shall take no more than three (3) business days to complete the review of a rule under this section.

As added by P.L. 31-1985, SEC.28. Amended by P.L. 19-1986, SEC.1; P.L. 1-1991, SEC.17.

IC 4-22-2-40

Recall of rule; readoption

Sec. 40. (a) At any time before a rule is accepted for filing by the secretary of state under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether it has been disapproved by the attorney general under section 32 of this chapter or disapproved by the governor

under section 34 of this chapter.

(b) Sections 24 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. Sections 24 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

(e) If a rule is:

- (1) subject to sections 31 and 33 of this chapter;
- (2) recalled under subsection (a); and
- (3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. The agency also shall comply with any other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, or 38 of this chapter.
As added by P.L.31-1985, SEC.29. Amended by P.L.1-1991, SEC.18; P.L.12-1993, SEC.4.

IC 4-22-2-41

Withdrawal of rule

Sec. 41. (a) At any time before a rule is accepted by the secretary of state for filing under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.
As added by P.L.31-1985, SEC.30. Amended by P.L.1-1991, SEC.19.

IC 4-22-2-42

Establishment of publishing format

Sec. 42. The publisher, with the assistance of the code revision commission, shall establish a format, a numbering system, standards, and techniques for agencies to use whenever they draft and prepare rules under this chapter.

As added by P.L.31-1985, SEC.31.

IC 4-22-2-43

Rules interpreting, implementing, or supplementing this chapter

Sec. 43. (a) Subject to section 42 of this chapter, the attorney general may adopt rules under this chapter to interpret or implement this chapter.

(b) An agency may adopt rules under this chapter to supplement the procedures in this chapter for its own rulemaking actions.

As added by P.L.31-1985, SEC.32.

IC 4-22-2-44**Failure to comply with provisions of this chapter**

Sec. 44. A rulemaking action that does not conform with this chapter is invalid, and a rule that is the subject of a noncomplying rulemaking action does not have the effect of law until it is adopted in conformity with this chapter. However, the failure of an agency to comply with section 20(2) of this chapter does not invalidate the rulemaking action.

As added by P.L.31-1985, SEC.33. Amended by P.L.36-1989, SEC.2.

IC 4-22-2-45**Invalidity of rule; assertion; limitation**

Sec. 45. A:

- (1) claim; or
- (2) defense;

that asserts that a rule is invalid on procedural grounds may not be asserted if the claim or defense is based on rulemaking procedures that were followed or should have been followed by a board described in IC 13-14-9-1 or the department in adopting a rule under this chapter unless the claim or defense that asserts the procedural defect is filed not more than two (2) years after the date the rule becomes effective. However, a claim may be filed or a defense raised at any time for an alleged procedural defect that is alleged to have caused substantial harm to the due process rights of an individual.

As added by P.L.34-1993, SEC.6. Amended by P.L.1-1996, SEC.33.

IC 4-22-2-46**Review of rules having certain fiscal impacts**

Sec. 46. The administrative rules oversight committee shall carry out a program to review each rule adopted under this chapter that has a fiscal impact of more than five hundred thousand dollars (\$500,000) for the following:

- (1) Economic impact.
- (2) Compliance with the intent of the general assembly.
- (3) The extent to which the rule creates an unfunded mandate on any state agency or political subdivision.
- (4) The extent to which the rule complies with the standards in IC 4-22-2-19.5.

As added by P.L.44-1995, SEC.7. Amended by P.L.17-1996, SEC.6.